

HOUSE BILL 1477

By McManus

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 53; Title 9; Title 13, Chapter 20 and Chapter 987 of the Public Acts of 1998, relative to tax increment financing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and it may be cited as, the "Tax Increment Financing Act of 2011."

SECTION 2. Tennessee Code Annotated, Title 9, is amended by adding the following language as a new, appropriately designated chapter:

9-23-101. As used in this chapter, unless the context otherwise requires:

(1) "Base Taxes" means the property taxes, if any, that were levied by a taxing agency and payable with respect to the property within a plan area (other than any portion of such taxes that is a debt service amount) for the year prior to the date the plan was approved;

(2) "Chief financial officer" with respect to a taxing agency shall mean the officer or employee of a taxing agency that is responsible for overseeing the budget and finances of such taxing agency or such other officer or employee as may be designated by the taxing agency for purposes of this chapter;

(3) "Community redevelopment agency" means a community redevelopment agency created by, or designated pursuant to the CRA Act;

(4) "Commissioner" means the commissioner of economic and community development.

(5) "Comptroller" means the comptroller of the treasury.

(6) "CRA Act" means the Community Redevelopment Act of 1998, as amended, being 1998 Public Chapter No. 987, which act has not been codified;

(7) "Dedicated taxes" means that portion of property taxes, if any, designated by a taxing agency to pay debt service on the taxing agency's debt as determined under this part, and the portion, if any, of incremental revenues above the base tax amount and debt service amount, resulting from a special levy for schools adopted subsequent to plan approval;

(8) "Governing body" means the board or body in which the general legislative powers of a municipality or taxing agency are vested;

(9) "Housing authority" means a housing authority organized in accordance with the provisions of Title 13, Chapter 20 or any public entity exercising the redevelopment powers of a housing authority pursuant to such chapter;

(10) "Industrial development corporation" means any industrial development corporation organized pursuant to the provisions of Title 7, Chapter 53;

(11) "Municipality" means any county, metropolitan government or incorporated city or town in this state;

(12) "Plan" means a redevelopment plan approved pursuant to Title 13, Chapter 20, an economic impact plan approved pursuant to Title 7, Chapter 53 or a community redevelopment plan approved pursuant to the CRA Act;

(13) "Plan area" means the area identified in any plan as being subject to such plan;

(14) "Public infrastructure" shall mean roads, streets, lighting, curbing, guttering, utility improvements and stormwater and drainage improvements, whether or not located on public property or a publicly dedicated easement, that are necessary or desirable, as determined by the applicable industrial development corporation, to facilitate the

acquisition, construction, rehabilitation and/or equipping of a project within the meaning of Title 7, Chapter 53.

(15) "Tax increment agency" means a housing authority, industrial development corporation and/or community redevelopment agency;

(16) "Tax increment revenues" means incremental property tax revenues to be allocated by a taxing agency to a tax increment agency pursuant to a tax increment statute and this chapter;

(17) "Tax increment statutes" means Title 7, Chapter 53, Title 13, Chapter 20 and the CRA Act; and

(18) "Taxing agency" means any county, city, town, metropolitan government or other public entity that levies property taxes on property within a plan area and that has approved the plan.

9-23-102.

(a) Notwithstanding any provision in any tax increment statute to the contrary, the property taxes levied upon property located within the area subject to a plan shall be divided as follows:

(1) Base taxes and dedicated taxes shall be allocated to and shall be paid, as provided in this chapter, to the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid; provided, that in any year in which the taxes on any property are less than the base and dedicated taxes, there shall be allocated and paid to the respective taxing agencies only those taxes actually imposed; and

(2) Any excess of taxes levied by a participating tax agency, over the base and dedicated taxes shall be allocated to and shall be paid to the tax increment agency as provided in the relevant tax increment statute to be applied

for the purposes permitted by such statute, provided, (i) a portion of the excess taxes may be allocated for administrative purposes as provided in this part, and (ii) excess taxes beyond amounts necessary to fund projects or supporting infrastructure may only be applied to principal and interest of debt incurred for projects or supporting infrastructure, or shall revert to the taxing agency general fund.

(b) Notwithstanding any provision in subsection (a) or the tax increment statutes to the contrary, any plan may allocate an amount greater than the base and dedicated taxes to any taxing agency that levied the taxes.

(c) If the area subject to a plan has, at any time, multiple parcels of property, a plan may provide that the base and dedicated taxes shall be calculated on an aggregate basis or on the basis of each parcel within the area subject to the plan. If such amounts are calculated on an aggregate basis, a taxing agency shall not be required to allocate any payments of tax increment revenues to the tax increment agency until the taxing agency has collected an amount equal to the base and dedicated taxes with respect to all parcels within the area subject to the plan.

(d) For purposes of allocating tax increment revenues hereunder, a plan may authorize a tax increment agency to separately group one or more parcels within a plan area for purposes of calculating and allocating the tax increment revenues hereunder, and in such cases, the allocation of tax increment revenues shall be calculated and made based upon each such parcel or group of parcels, and not the entire area subject to the plan. Any plan may also provide for and/or permit the allocation of tax increment revenues with respect to any parcel or group of parcels within a plan area to begin in different years in order to match tax increment revenues with the purposes for which such revenues will be applied as determined by the tax increment agency.

(e) A plan may provide the date(s) in each year that each taxing agency shall be required to allocate tax increment revenues to the tax increment agency, and if a plan does not provide the dates for such allocations, tax increment revenues shall be allocated and distributed to each tax increment agency no later than March 31 in each year with respect to taxes collected with respect to the prior tax year. Unless a plan provides to the contrary or the taxing agency and tax increment agency otherwise agree, tax increment revenues that are payable with respect to delinquent taxes shall be paid to the tax increment agency within thirty (30) days of receipt by the taxing agency. Partial payments collected prior to the delinquency date shall be allocated first to base and dedicated taxes.

(f) Unless a taxing agency and tax increment agency agree otherwise or a plan shall provide otherwise, a taxing agency shall pay to the tax increment agency with the payment of any tax increment revenues that are realized from delinquent tax payments, a pro-rata share of the interest on such delinquent taxes based upon the portion of the interest on the delinquent taxes that is attributable to such tax increment revenues.

(g) If the debt service amount has not been established by the governing body of the taxing agency, the debt service amount can be established by a certificate of the chief financial officer of the taxing agency designating such amount with respect to each tax year, but in either event the determination of debt service amount shall be subject to review and approval of the comptroller.

9-23-103. Notwithstanding any provision of any tax increment statute or any plan to the contrary, no allocation of tax increment revenues shall be made with respect to any property for a period of more than twenty (20) years pursuant to any plan unless both the commissioner and the comptroller have made a written determination that a longer period is in the best interest of

the state. Prior to rendering a state's interest determination, the commissioner shall establish criteria for the determination by rule, subject to approval of the comptroller.

9-23-104. Notwithstanding any provision of a tax increment statute to the contrary, any plan may provide that up to five percent (5%) of incremental tax revenues may be set aside for payment of reasonable expenses incurred by the tax increment agency (assessor of property and/or trustee) and tax agency administrative offices in administering the plan, including a reasonable allocation of overhead expenses.

9-23-105.

(a) After the approval by each applicable taxing agency of a plan, the applicable tax increment agency shall transmit to the appropriate assessor of property for each taxing agency and the chief financial officer of each taxing agency a copy of the description of all property within the area subject to the plan (including parcel numbers with respect to real property), a copy of each resolution of each taxing agency approving the plan and the base tax amount with respect to all property subject to the plan. The taxing agency, with the assistance of the assessor of the property, shall determine the base tax amount.

(b) Each tax increment agency shall also file a copy of the information described in subsection (a) with the comptroller and shall file with the comptroller an annual statement of all tax increment revenues allocated to the tax increment agency with respect to each plan.

9-23-106. Any taxing agency and tax increment agency may agree upon, approve and amend policies and procedures for allocating and calculating tax increment revenues and implementing the provisions of this chapter and the applicable tax increment statute; provided, however, such policies and procedures shall not conflict with the provisions of this chapter or any tax increment statute.

9-23-107. Notwithstanding any provision of Title 7, Chapter 53 to the contrary, the proceeds of tax increment revenues payable to an industrial development corporation shall only be applied to pay the cost of public infrastructure costs or to pay debt service on indebtedness incurred to finance or refinance such public infrastructure costs and the costs of financing such costs, provided, however, that such revenues may be used for any other purposes authorized by Title 7, Chapter 53 with respect to which both the commissioner and the comptroller have made a written determination that the use of tax increment revenues for such purpose is in the best interest of the state.

SECTION 3. Tennessee Code Annotated Section 7-53-312, is hereby amended to add the following as subsection (m):

(m) In the event of any conflict between the provisions of this section and Title 9, Chapter 23, the provisions of Title 9, Chapter 23 shall control.

SECTION 4. Tennessee Code Annotated Section 7-53-314, is hereby amended to add the following as subsection (l):

(l) In the event of any conflict between the provisions of this section and Title 9, Chapter 23, the provisions of Title 9, Chapter 23 shall control.

SECTION 5. Tennessee Code Annotated Section 13-20-205, is hereby amended to add the following as subsection (h):

(h) In the event of any conflict between the provisions of this section or any other provision of this chapter and Title 9, Chapter 23, the provisions of Title 9, Chapter 23 shall control.

SECTION 6. The CRA Act is hereby amended to add the following as new section:

SECTION _____. In the event of any conflict between the provisions of this act and Title 9, Chapter 23, the provisions of Title 9, Chapter 23 shall control.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of the act which can be upheld without the invalid provision, and to that end the provisions of this act are declared to be severable.

SECTION 8. This act shall take effect on becoming law, the public welfare requiring it. This act shall not apply to a plan for which required public hearings were conducted prior to the effective date of this act, without the concurrence of the tax increment agency, all affected taxing agencies, and the holders of any indebtedness secured by the tax revenues allocable pursuant to the plan.